

## Message Text

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DRAFTED BY EUR/RPM:EREHFELD  
APPROVED BY EUR/RPM:HAHOLMES  
L/M:MR. SHAMWELL  
OSD/ISA:MR. MILLER  
OSD/C:DOC COOKE  
OSD/OGC:MR. ALLEN  
EUR/EX:MR. TULL

-----301203Z 044614 /10

R 300058Z MAR 77  
FM SECSTATE WASHDC  
TO USMISSION NATO

UNCLAS STATE 070107

E.O. 11652: N/A

TAGS: APER, AORG, NATO

SUBJECT: NATO EMPLOYMENT OF US CITIZENS

REF: A) STATE 274828 NOV 76; B) USNATO 1040

1. YOU SHOULD INFORM NATO IN WRITING OF THE FOLLOWING  
IN REPLY TO THE LETTER QUOTED IN REF B:

A. BECAUSE THERE ARE NO NATO A GRADE AND B5 GRADE  
POSITIONS WITH A SALARY OF LESS THAN DOLS 15,000, THE  
LIMIT UNDER US LAW, DIRECT HIRE FOR THESE POSITIONS OF  
US NATIONALS SHOULD BE DISCONTINUED.

B. WITH REGARD TO POSSIBLE HIRING OF US NATIONALS FOR B4  
GRADE POSITIONS, NATO SHOULD SUBMIT INFORMATION ON PRO-  
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POSED SALARY TO THE MISSION FOR APPROVAL OF THE DIRECT  
HIRE. E WILL THEN DETERMINE ON A CASE-BY-CASE BASIS  
WHETHER NATO CAN HIRE THE INDIVIDUAL CONCERNED.

C. NATO CAN CONTINUE TO HIRE US NATIONALS FOR B3 AND B2  
POSITIONS.

D. NATO SHOULD TERMINATE THE EMPLOYMENT OF ALL US NATIONALS WHO HOLD DIRECT HIRE A GRADE AND B5 GRADE

APPOINTMENTS AS SOON AS IT IS POSSIBLE UNDER CURRENT CONTRACTUAL ARRANGEMENTS. IT IS UP TO NATO TO DETERMINE AT WHAT TIME TERMINATION IS POSSIBLE UNDER CONTRACTUAL OBLIGATIONS AND WE DO NOT WANT TO BE INVOLVED IN THIS DETERMINATION. UNDER NO CIRCUMSTANCES SHOULD NATO TAKE ANY ACTION TO EXTEND, OR MAKE MORE PERMANENT THE CURRENT EMPLOYMENT STATUS OF US NATIONALS IN THESE POSITIONS. HOWEVER, YOU SHOULD EXPRESS THE HOPE THAT AFTER THE EMPLOYEES ARE NOTIFIED OF THE INTENDED TERMINATION OF THEIR EMPLOYMENT, THEY COULD STAY ON THE NATO PAYROLL FOR ABOUT 90 DAYS SO THAT WE CAN EXPLORE THE POSSIBILITY OF SECONDMENT TO THE SAME POSITIONS IF THEY ARE INTERESTED. YOU SHOULD INDICATE THAT WE REGRET THAT WE HAVE TO MAKE THIS REQUEST WHICH IS UNAVOIDABLE BECAUSE CONTINUED EMPLOYMENT IN DIRECT HIRE STATUS OF THESE EMPLOYEES WOULD BE IN VIOLATION OF ARTICLE 19 OF THE OTTAWA AGREEMENT INASMUCH AS THERE IS NO WAY THE SALARY CAN BE EXEMPTED FROM US TAXES.

E. NATO SHOULD FURNISH INFORMATION ON THE SALARY OF THE B4 GRADE EMPLOYEES NOW ON THE PAYROLL SO THAT WE CAN DETERMINE WHETHER THEIR EMPLOYMENT MUST ALSO BE TERMINATED.

F. THAT LETTERS ARE BEING SENT BY THE MISSION TO EACH US NATIONAL NOW IN A A GRADE AND B5 GRADE DIRECT HIRE UNCLASSIFIED

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STATUS. YOU SHOULD ATTACH THE TEXT OF THE LETTERS FOR INFORMATION.

2. YOU SHOULD INFORM BY LETTER EACH OF THE US NATIONALS IN A GRADE AND B5 GRADE POSITIONS NAMED IN THE NATO LETTER QUOTED IN PARA 1 OF REF B THAT:

A. NOTHING IN SECTION 1011 OF THE TAX REFORM ACT OF 1976 EXEMPTS SALARIES PAID TO US CITIZENS EMPLOYED BY NATO FROM TAXATION WITH RESPECT TO INCOME EXCEEDING DOLS 15,000 ANNUALLY, AND THAT THESE AMOUNTS ARE NOT REPEAT NOT EXEMPT FROM US TAX PURSUANT TO ARTICLE 19 OF THE OTTAWA AGREEMENT;

B. IN CASE THEY ARE NOTIFIED THAT NATO EMPLOYMENT WILL BE TERMINATED, THEY SHOULD INFORM THE MISSION WHETHER THEY WOULD BE INTERESTED IN SECONDMENT TO THE SAME POSITIONS. IF THAT IS THE CASE, WE WOULD EXPLORE THE POSSIBILITY, AND IF IT IS POSSIBLE, GIVE THEM THE

INFORMATION THEY NEED IN ORDER TO MAKE A FINAL DECISION.

3. FYI IS A LETTER DATED MARCH 23, 1977 FROM MR. HORACE F. SHAMWELL, JR., DEPUTY ASSISTANT LEGAL ADVISER FOR

MANAGEMENT, DEPARTMENT OF STATE, TO MR. BENJAMIN FORMAN, ASSISTANT GENERAL COUNSEL, INTERNATIONAL AFFAIRS, DEPARTMENT OF DEFENSE:

"DEAR MR. FORMAN:

PER OUR TELEPHONE CONVERSATION OF MARCH 4, I HAVE CAUSED A REVIEW TO BE MADE WITHIN THE STATE DEPARTMENT OF THE POSITION REFLECTED IN MY NOVEMBER 3, 1976, MEMORANDUM ON THE EFFECT OF P.L. 94-955, THE TAX REFORM ACT OF 1976, ON ARTICLE 19 OF THE 1951 AGREEMENT RELATING TO THE STATUS OF THE NORTH ATLANTIC TREATY ORGANIZATION. FOR UNCLASSIFIED

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THE REASONS STATED BELOW, THE DEPARTMENT SEES NO BASIS FOR ALTERING ITS CONCLUSION THAT THE TAX REFORM ACT DOES INDEED AFFECT THE TAX-EXEMPT STATUS OF SALARIES OF US CITIZENS EMPLOYED DIRECTLY BY NATO.

UNDER ARTICLE 19 OF THE TREATY, ANY MEMBER STATE MAY ENTER INTO AN ARRANGEMENT WITH THE NORTH ATLANTIC COUNCIL UNDER WHICH THE MEMBER MAY EMPLOY AND ASSIGN TO THE ORGANIZATION THOSE OF ITS NATIONALS WHO WILL SERVE ON THE INTERNATIONAL STAFF OF THE ORGANIZATION AND PAY THE SALARIES AND EMOLUMENTS OF SUCH PERSONS FROM ITS OWN FUNDS. SUCH AN AGREEMENT WAS ENTERED INTO BY THE UNITED STATES ON SEPTEMBER 29, 1951 (COPY ENCLOSED). ARTICLE 19 ALSO PROVIDES THAT IF AN AGREEMENT ANTICIPATED BY ARTICLE 19 IS 'SUBSEQUENTLY MODIFIED OR TERMINATED,' THE MEMBER STATE IS NO LONGER BOUND TO EXEMPT ITS NATIONALS FROM TAXATION ON THEIR SALARIES AND EMOLUMENTS. ON APRIL 11 AND APRIL 14, 1972, THE DIRECTOR OF ADMINISTRATION AND PERSONNEL, NATO, AND THE DIRECTOR OF PERSONNEL, ADMINISTRATION AND SECURITY, U.S. MISSION TO NATO, EXCHANGED LETTERS EFFECTING AN AGREEMENT RELATING TO THE DIRECT HIRE BY NATO OF U.S. CITIZENS. THIS AGREEMENT (COPY ENCLOSED) WAS CHARACTERIZED AS 'IMPLEMENTATION' OF THREE AGREEMENTS RELATING TO EMPLOYMENT OF U.S. NATIONALS BY SEVERAL NATO BODIES, INCLUDING THE AFOREMENTIONED AGREEMENT OF SEPTEMBER, 1951. IT PROVIDED, INTER ALIA, THAT THE AFFECTED U.S. CITIZEN EMPLOYEES WOULD HAVE TO BE HIRED UNDER CIRCUMSTANCES WHICH WOULD QUALIFY THEM FOR AN EXEMPTION FROM U.S. INCOME TAX UNDER THEN PREVAILING LAW.

IN LIGHT OF THE ABOVE, THE DEPARTMENT REAFFIRMS ITS  
FINDING THAT THE TAX REFORM ACT OF 1976 APPLIES TO  
SALARIES OF U.S. CITIZEN NATO EMPLOYEES, NOTWITHSTANDING  
SENTENCE ONE OF ARTICLE 19 OF THE OTTAWA AGREEMENT.

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SINCERELY, HORACE F. SHAMWELL, JR., DEPUTY ASSISTANT LEGAL  
ADVISER FOR MANAGEMENT."  
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## Message Attributes

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